IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6174 OF 2007

Shri Manohar Anna Jagtap ...Petitioner

Versus

Arun Yashwant Pawar and Ors ....Respondents

Vishwanath S.Talkute for the petitioner.

Milind Deshmukh for the respondents.

CORAM: S.C.DHARMADHIKARI, J.

4th December, 2007.

P.C. :

1. Heard learned counsel appearing for the parties.

2. The petition can be disposed off because the petitioner who is the aggrieved party so also the first respondent/original plaintiff are represented before me.

3. Upon perusal of the application for appointment of Commissioner made in Special Civil Suit no. 24 of 2007

which is filed for specific performance of agreement for sale, I am satisfied that at this stage there is no warrant for appointing a Court Commissioner. The Plaintiff must first step into the witness box and prove the oral agreement. Once such a proof has been laid, then, it would be open for the plaintiff to apply to the Trial court for appropriate reliefs including for appointment of Court Commissioner. It is only when this stage is reached that any such application could have been made. The Learned Judge was in grave error in entertaining the application and passing the impugned order appointing the Commissioner. The appointment is not to be made to enable the parties to collect evidence. In such circumstances, the impugned order is quashed and set aside. However the First respondent will be at liberty to file an application afresh after the oral evidence of the plaintiff is completed. Petiton allowed as above. No costs.

sd/-

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